

NATURAL RESOURCES COMMISSION

September 16, 2014 Meeting Minutes

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Kent Abernathy
R. T. Green
Phil French
Jake Oakman
Don Ruch
Doug Grant
Robert Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Joseph Hoage	Executive Office
Michael Smith	Executive Office
Phil Bloom	Communications
Steve Hunter	Law Enforcement
Danny L. East	Law Enforcement
John Bacone	Nature Preserves
Mark Reiter	Fish and Wildlife
Cheryl Hampton	Land Acquisition
Dan Bortner	Parks and Reservoirs
Nick Heinzelman	Land Acquisition
Linnea Petercheff	Fish and Wildlife

GUESTS PRESENT

Melinda Bol	Tom Asher	Erin Huang
Brad Collins	Chris Kiefner	Jack Corpuz
Jim Meece	Bryan Meharry	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 6:32 p.m. EDT, on September 16 at Turkey Run State Park, Turkey Run Inn, Lusk Room 8102 East Park Road, Marshall. With the presence of ten members, the Chair observed a quorum.

The Chair offered appreciation to Dan Bortner, Director of the Department's Division of Parks and Reservoirs, as well as the staff of Turkey Run State Park for the opportunity to visit the property. The Chair also thanked the members and guests for making the trip to Turkey Run State Park for the meeting noting the Commission's interest in conducting meetings outside of Indianapolis "at least a couple of times during the summer."

Don Ruch moved to approve the minutes for the meeting held on July 15, 2014. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DIRECTOR, DEPUTIES DIRECTOR, AND ADVISORY COUNCIL

Director Cameron Clark provided his report, which was focused exclusively upon the Hoosier Outdoor Experience (HOE) that has been held for the past five or six years at Fort Harrison State Park. Clark reported that HOE is a free event occurring on Saturday and Sunday, September 20th and 21st, where visitors are allowed to get "hands-on experience" at approximately 50 different outdoor activities. Clark explained that volunteer groups will be exhibiting certain activities noting that a tree dog group will be participating, someone will be showing how to clean a deer, and there will be an opportunity to shoot a bow, a crossbow, or a shotgun. Clark stated that last year over 30,000 people attended the two-day event. Clark encouraged people to attend and announced that trolleys will be operating within the park to transport visitors from one area to another and buses will be available to transport people from satellite parking areas into the park.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis noted that the State Fair was successful with a lot of people visiting the exhibits. Davis thanked the State Fair for loaning the use of their trolleys for the HOE.

Davis advised that the Eagle Marsh Carp Barrier project is progressing. He explained that the permits from the Indiana Department of Environmental Management have been received and permits from the U.S. Army Corps of Engineers are expected soon. Davis added that the contract is expected to be finalized on September 17, 2014. In an effort to express the importance of this project, Davis noted that a 1,000-year rain event occurred two weeks ago, "five inches of rain in two hours," followed 18 hours later by a 100-year flood event.

Davis also mentioned that a lot of DNR staff retired in August, including assistant directors and property managers. Davis observed that DNR has experienced a "real change."

Chris Smith, Deputy Director for the Bureau of Water Resource and Regulation, provided his report. Smith stated that September is Archaeology Month noting that the Division of Historic Preservation and Archaeology staff is traveling throughout the state making presentations. Smith encouraged anyone who may be interested to check the website for a full calendar of events.

Smith advised that the Natural Resources Summer Study Committee meets on September 17, 2014 at Indiana State University. The topics for discussion involve trails, trail funding and maintenance. Smith noted that the Committee also met in August and had a well-attended meeting discussing captive deer and captive deer related disease issues. Smith offered that approximately 40 people testified during the meeting having a wide variety of opinions.

Smith advised his belief that the Department is “wrapping up” its search for a new legislative director.

The Chair offered an update on the effort to replace the Division of Hearings’ Chief Administrative Law Judge advising that two rounds of interviews had been completed. He thanked Vice Chair Jane Stautz, Patrick Early, R.T. Green and Stephen Lucas for their service on the Hiring Committee. Poynter explained that the Committee had hoped to have feedback for this meeting but the matter remains in the approval process. The Chair assured the members that they would be notified immediately as soon as all of the approvals are in place.

The Chair also noted the retirement of the Commission’s Court Reporter, Debbie Freije, “a vital part of the Division of Hearings”, who supported the administrative law judges and paralegal. The Chair expressed hope that this position, which is “really important to the functioning of the Division of Hearings”, would be filled soon.

Poynter thanked Jake Oakman, from the Department of Tourism, and Kent Abernathy, from the Department of Environmental Management, for attending. John Davis introduced Dan Bortner, the Director of State Parks and Reservoirs, and Karen Hinton, who runs the Inn System for the Department. The Chair offered his appreciation for their hospitality.

CHAIR, VICE CHAIR, AND CHAIR OF ADVISORY COUNCIL

Updates on Commission and Committee activities

The Chair noted that Patrick Early, the Chair of the Advisory Council, was not present but confirmed that the Advisory Council had not met.

Jane Stautz confirmed that the AOPA Committee met on August 28th to consider a variety of matters involving riparian rights issues, oil and gas matters, and the operation of motor boats within 200 feet of shore. Stautz offered thanks to all the AOPA Committee members for their service.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Bender Addition Nature Preserve in Noble County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone expressed that this is an addition to an existing nature preserve owned by the ACRES Land Trust dedicated in the early 1970s. The nature preserve straddles the south branch of the Elkhart River. Bacone noted that the nature preserve contains high quality floodplain and upland native forests, which provides habitat for the Eastern Massasauga snake, a state endangered species presently under consideration for federal listing. Bacone noted the map contained within the Commission packet and offered photographs of this “significant special spot”.

Don Ruch inquired about how many of the Eastern Massasauga snakes have been identified at the site.

Bacone stated that he did not have any population information, but believed the herpetologist for the Department had visited the site.

Don Ruch moved to approve the dedication of the Bender Addition Nature Preserve in Noble County. R.T. Green seconded the motion. Upon a voice vote, the motion carried

DNR, LAW ENFORCEMENT

Consideration of request for preliminary adoption of amendments to 312 IAC 5, which governs organized events on Indiana's public waters; Administrative Cause No. 14-098F

Lt. Col. Steve Hunter presented this item. Hunter stated that the Division of Law Enforcement discovered that permitting of events on public waters was not always being exercised uniformly across the district offices. He explained that this situation existed predominantly with respect to events such as fireworks displays, triathlons, and other events that do not involve the use of boats. The effort to address this situation first involved the thought of duplicating a definition existing within the fishing tournament rule at 312 IAC 2 into 312 IAC 5 making the definition equally applicable to the recreational event situation. Through further consideration Sandra Jensen suggested, and the Law Enforcement Division agrees, that the fishing tournament rule found in 312 IAC 2 should be moved and incorporated into 312 IAC 5. Hunter observed that this proposal is essentially a technical change that does not create any new regulation.

Hunter noted that this is "repeat business" for the Commission explaining that this rule was preliminarily adopted in the past, but needed to be withdrawn.

Cameron Clark moved to approve preliminary adoption of amendments to 312 IAC 5 governing organized events on Indiana's public waters. Phil French seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Consideration for preliminary adoption of the repeal of 312 IAC 18-3-12 and 312 IAC 18-3-20, governing the control of larger pine shoot beetle and the regulation of Brazilian elodea, respectively; Administrative Cause No. 14-066E and 14-067E

Sandra Jensen, Assistant Director of the Division of Hearings, presented this item. Jensen explained that she agreed to present this item on behalf of the Division of Entomology and Plant Pathology. She explained that 312 IAC 18-3-12 regulated the movement of pine products in an effort to control the spread of the larger pine shoot beetle. Jensen advised that because the entire State of Indiana is now under federal quarantine the rule is no longer needed because Federal regulations control the movement of pine outside the State of Indiana.

With respect to the regulation of Brazilian elodea, Jensen advised that the Commission adopted 312 IAC 18-3-23, which identifies Brazilian elodea as an invasive aquatic plant declared a "pest

or pathogen”. Because Brazilian elodea is now identified within 312 IAC 18-3-23, 312 IAC 18-3-20 is duplicitous and no longer necessary.

Jensen offered the proposed repeals for preliminary adoption noting that the repeal of these rules is also consistent with the initiative to eliminate unnecessary regulation.

John Davis explained that Brazilian elodea had to be eradicated from Griffy Lake a few years ago noting that the action prompted a discussion with aquarium suppliers before Brazilian elodea was prohibited by the adoption of 312 IAC 18-3-20. Davis advised that while the written material indicates that this rule may, in light of the adoption of 312 IAC 18-3-23, be creating confusion to small businesses it was agreed by aquarium suppliers previously that Brazilian elodea be identified as a prohibited species of plant.

Don Ruch stated that “Brazilian elodea is an oxymoron. You’re using a native plant; you’re giving it as a common name to an invasive weed. The real name is Brazilian waterweed.” Ruch suggested that 312 IAC 18-3-23(4) should be amended to correct the name.

Jensen explained that any correction to the name in 312 IAC 18-3-23(4) would involve amending that rule. She indicated she would notify the Division of Entomology and Plant Pathology who, in consultation with Ruch, could proceed with the needed correction through a future rule amendment. John Davis concurred.

Jensen recommended that the Commission proceed with preliminary adoption of the repeal of both 312 IAC 18-3-12 and 312 IAC 18-3-20

Jane Stautz moved to approve preliminary adoption of the repeal of 312 IAC 18-3-12 and 312 IAC 18-3-20 governing the control of larger pine shoot beetle and the regulation of Brazilian elodea. Don Ruch seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Request for preliminary adoption of amendments to 312 IAC 9 governing fish and wildlife—commercial licenses and permits; Administrative Cause No. 14-096D

Linnea Petercheff, Operations Staff Specialist for the Division of Fish and Wildlife, presented this item. Petercheff explained that this is one of two rule amendment proposals developed through the Division’s biennial rule review process that began in early 2014 with the receipt of “thousands of comments” from the public and input from Department staff.

Petercheff explained that the rules in this proposal relate to permits and licenses associated with commercial deer processors, reptile captive breeders, wild animal rehabilitators, wild animal nuisance control operators, fish haulers, and dog training grounds.

Petercheff advised that the rule creates a new trapper education permit that will allow the trapping of animals outside of season for a qualified trapper education program.

Petercheff elaborated that the amendments will require commercial deer processors to properly dispose of deer carcasses and reduced the continuing education requirements for wild animal rehabilitators and wild animal nuisance control operators.

The amendments associated with the dog training ground are the result of statutory amendments that allow for the chasing of rabbits with a dog behind a fence, Petercheff noted. She added that the statute exempts a dog training ground permit holder from the requirement to hold “possession type permit to possess rabbits behind a fence.” Petercheff explained that this rule will add rabbits as a species to a permit presently only allowed for pheasant and quail and sets minimum acreage requirements and establishes other requirements.

Erin Huang, the State Director for the Humane Society of the United States, briefly offered a comment in opposition to allowing “the addition of any animal to the dog training ground permit rule” noting that the “chasing of a wild animal inside an enclosure poses ethical concerns.”

The Chair indicated that certain written comments had been received and distributed noting specifically a comment received from Herb Higgins in support of the amendment requiring commercial processors to properly dispose of deer carcasses.

Cameron Clark moved to approve preliminary adoption of amendments to 312 IAC 9 governing fish and wildlife commercial licenses and permits. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Consideration of request for preliminary adoption of amendments to 312 IAC 9, governing fish and wildlife-related rules; Administrative Cause No. 14-095D

Petercheff also presented this item. Petercheff offered that these rule amendments also resulted from the Division’s biennial review process described previously. Petercheff noted that this is a much larger rule proposal adding that she intended to “highlight” some of the amendments.

Petercheff explained that the rule amendments associated with deer hunting would change the urban deer zone license to a deer reduction zone license, allow the use of the 28-gauge shotgun during firearms season, allow additional rifle cartridge size by eliminating the maximum case length thereby allowing “some high power rifles”.

Additional rule amendments discussed by Petercheff would prohibit the use of dogs to chase or take wild pigs and identifies “heirloom or heritage pig breed hogs to be possessed and sold” without need for a permit from DNR, and would allow landowners to authorize another person to take certain nuisance wild animals without the need for written permission. Petercheff continued that the rule amendments would suspend ruffed grouse season statewide, reduce the bag limit for Eastern Snapping Turtles and other soft shelled turtles and change size limits for the turtles taken. With respect to fishing, Petercheff explained that the amendments will allow three hooks for sport fishing lines and will make changes to various definitions, create a statewide bag limit for all species of pan fish, and establish size limits for Walleye.

Petercheff explained that the Department was seeking to withdraw four rules, identified as 312 IAC 9-7-3, 312 IAC 9-7-16, 312 IAC 9-8-2 and 312 IAC 9-8-6, that were included in the proposal originally submitted for consideration by the Commission. Petercheff also explained that a blue paper passed out to the Commission members reflected a revision the Division was requesting with respect to the originally submitted amendment to 312 IAC 9-8-5. Petercheff noted that the revision to 312 IAC 9-8-5 would clarify that the existing reference to the “city limits of Lafayette” means the southernmost city limits.

R.T. Green asked whether the rule proposal regarding grouse suspend grouse season altogether. Petercheff confirmed.

Green followed up and asked regarding the possibility of the season being reinstated. Petercheff responded in the affirmative and deferred to Mark Reiter, Director of the Division of Fish and Wildlife. Reiter stated, “There is hope, and we termed it ‘suspend’ rather than completely getting rid of it because we do hope that at some point more habitat” will be established.

The Chair reflected his understanding that the Department is seeking to withdraw “the catfish portions...and we’ll bring those back in a separate rule package probably at our next Commission meeting” indicating further that additional work on those amendments is necessary.

Jack Corpuz questioned why the catfish rules were being recommended for withdrawal from the package. The Chair answered that it had been determined that additional work was necessary. Cameron Clark indicated his hope that the catfish rule amendment would be on the next meeting agenda.

With regard to the ruffed grouse amendment, Corpuz stated that “this is the beginning of the end if it’s not truly the end.” Corpuz observed that habitat has always been the issue and offered the belief that this is important for other upland bird hunters “if we don’t take care of our resource this is what’s going to happen; we’re going to lose our other seasons.” Corpuz added that quail “are in big trouble right now” because of the loss of habitat, bird populations are declining. He urged the Department and the Commission to act on this matter noting the need to encourage private landowners to help save the habitat and the wildlife.

Corpuz offered that when the pistol cartridge rifles were considered “I stood here and said that I would support the pistol cartridge rifles, but that’s where I drew the line; that I would go no further. I’m standing up here to tell you that I’m keeping my campaign promise. I am going no further. I think it’s not necessary in the state of Indiana; we’ve been doing pretty fine with muzzleloaders, even though some of them will reach out to 300 yards. We’ve been doing fine with shotguns. We’ve added crossbows. We’re still killing deer at a record pace. I guess what concerns me more is now with this particular rule you can go out and buy an AK47 with a 30 round magazine. You can add a bump fire stock, and if you don’t know what that is, look it up on the internet. And when you watch it fire it will look like a machine gun. It’s bad enough that we have to go out in the woods today with people with the extended magazines on shotguns that are shooting six and eight times, but now you’re talking about turning somebody loose with a 30 round magazine out there. Without putting any limitations on these centerfire rifles, I think you’re going to have to say you’re going to have to plug these magazines and say five rounds or

six round, or whatever...” Corpuz urged the Commission to reconsider and suggested looking at how the rule is written, whether there should be any restrictions, and consider the calibers that would be allowed.

The Chair expressed that this matter is before the Commission for preliminary adoption, which will “allow a lot of conversation on these rules.” The Chair asked Reiter for any insights.

Reiter stated that the use of centerfire rifles has mostly been considered a safety issue due to Indiana’s relatively flat terrain and distance of travel for bullets. Through discussions with other states, the Division of Fish and Wildlife has determined that the reason other states do not allow centerfire rifles is to limit harvest. Reiter observed that limiting harvest through the restriction of weapon type does not fit within Indiana’s deer management scheme. Reiter also explained that each year the Department receives requests from legislators to allow a particular caliber or another and referenced multiple citizens’ petitions to expand the use of rifles. The Department and Division decided to “put it out there” to hear from people “what parts of it they like or don’t like”, which may result in revisions.

The Chair noted again that written comments had been received on this rule, which were distributed to the Commission members.

R.T. Green moved to approve preliminary adoption of amendments to 312 IAC 9 governing fish and wildlife related rules. The Chair confirmed that Green’s motion included the withdrawal of the amendments to 312 IAC 9-7-3, 312 IAC 9-7-16, 312 IAC 9-8-2 and 312 IAC 9-8-6 as well as the proposed revision to 312 IAC 9-8-5. Jane Stautz seconded the motion. Upon a voice vote, the motion carried. Jake Oakman, opposed.

Consideration of Department’s Report regarding petitions for change of rules filed with the Commission; Administrative Cause Nos. 12-202D, 13-020D, 13-052D, 13-079D, 13-142D, 13-161D, 14-038D

Petercheff presented this item. Petercheff explained that these citizen petitions for changes to fish and wildlife rules were incorporated into the Division of Fish and Wildlife biennial review. Two of the citizen petitions related to allowing high power rifles that were included in the proposed rules previously discussed. One of the petitions related to the sale of squirrel hides that was added to the river otter rule package granted preliminary adoption in July. Petercheff explained that the Division did not support the remaining citizen petitions for the reasons explained in the report and those amendments were not included in the rule proposals.

Jane Stautz moved to approve the Departments report and recommendations regarding petitions for change of rules associated with fish and wildlife matters. Don Ruch seconded the motion. Upon a voice vote, the motion carried.

Consideration for approval of amendments to the Public Freshwater Lake Listing, Information Bulletin #61; Administrative Cause No. 14-072W

Petercheff also presented this item. Petercheff offered that the purpose of this proposal was to add two more lakes to the Commission’s nonrule policy document listing public lakes.

Petercheff explained that Little Long Lake located in Steuben County does have a history of public access and a record of permits. Wilmot Pond in Noble County, which has a record of permits and is an impoundment on the Tippecanoe River, also meets all the requirements for identification of a public lake.

Doug Gant moved to approve the amendments to the Public Freshwater Lake Listing. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of Report on Rule Processing, Public Hearing, and Hearing Officer Analysis with Recommendations Regarding Final Adoption of amendments to 312 IAC 4 providing organization standards for the DNR, Division of Law Enforcement; LSA Document #13-448(F); Administrative Cause No. 13-119L

Sandra Jensen presented this item. Jensen explained that for consideration by the Commission were amendments to 312 IAC 4, associated with the Department's Division of Law Enforcement. Jensen advised that the proposal would amend the definitions of "conservation officer" and "probationary officer" and remove several references to "deputy director" presently found in definitions and in 312 IAC 4-4-4. Jensen added that the proposal would also authorize the Division Director to make spot appointments of officers to the ranks of captain, major, and lieutenant colonel with the ability for those officers to return to their last permanent rank at the will of the Division Director with the approval of the Department Director.

Jensen confirmed that on January 2, 2013, the Department received notice that the rule proposal qualified for an exception to the suspension on rulemaking establish by Executive Order 13-03 before being granted preliminary adoption by the Commission on January 21, 2014. The Office of Management and Budget approved the proposed rule amendments on May 27, 2014 and on May 28, 2014 it was determined that rule processing could not be completed with the one year from the date of posting the Notice of Intent. For this reason the Commission authorized the posting of notice to extend the rulemaking deadline to December 1, 2014.

A public hearing, attended by Colonel Danny East and Lt. Colonel Steve Hunter, was conducted by Jennifer Kane on June 11, 2014. Jensen advised that no member of the public attended the public hearing but one written public comment was received, considered and responded to by the Division as set forth in the written report.

Jensen noted that Colonel Danny East and Lt. Colonel Steve Hunter were present to address questions from the Commission.

Cameron Clark moved to approve final adoption of amendments to 312 IAC 4 providing organization standards for the DNR, Division of Law Enforcement. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 10 governing floodplain management; LSA Document #14-65(F); Administrative Cause No. 14-006W

Sandra Jensen presented this item. Jensen noted that two administrative rules that would otherwise expire on January 1, 2015 were being presented for readoption. The rules included 312 IAC 10 (this agenda item), which establishes minimum standards for the delineation and regulation of flood plains and 312 IAC 22.5 (Agenda Item 12), that controls developments planned within 100 feet of a cemetery. Jensen observed that the notice of intent to readopt these rules, posted in March and April, 2014, respectively, offered notice that a person could request to have a particular section readopted separately. No such request was made and no public comments were received regarding the proposed readoptions. Jensen also explained that readoptions of rules are not subject to the regulatory moratorium established by Executive Order 13-03.

Jensen recommended that 312 IAC 10 and 312 IAC 22.5 be readopted in their entirety and without amendments.

Doug Grant moved to approve final action on the readoption of 312 IAC 10 governing floodplain management. Phil French seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 22.5 governing cemeteries and burial grounds, registration and management; LSA Document #14-106(F); Administrative Cause No. 14-008H

[See discussion of previous agenda item.]

Doug Grant moved to approve final action on the readoption of 312 IAC 22.5 governing cemeteries and burial grounds, registration and management. Phil French seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 7:19 p.m., EDT.